

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: COMMERCIAL DIVISION

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MAURIZIO OPPEDISANO, DISANO TRUCKING, INC.,
and FLUSHING AIRPORT HOLDINGS, LLC,

IAS Part 4
Hon. Marguerite A. Grays

*Plaintiffs-
Counterclaim-Defendants,*

Index No. 709138/2014

Motion Seq. No. 12

– against –

FRANK ARNOLD,

*Defendant-
Counterclaim-Plaintiff.*

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AFFIDAVIT OF MAURIZIO OPPEDISANO

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

MAURIZIO OPPEDISANO, being duly sworn, states as follows under the penalties of perjury:

INTRODUCTION

1. I am a resident of Queens County, New York, and I am a Plaintiff/Counterclaim-Defendant (“Plaintiff,” and together with Plaintiffs/Counterclaim-Defendants Disano Trucking, Inc. and Flushing Airport Holdings, LLC, “Plaintiffs”) in the above-captioned matter. I respectfully submit this Affidavit in support of the present motion for a new trial as to: (a) which Plaintiff is liable for use and occupancy of the real property at issue in this case, and (b) the extent of that liability, as determined by what percentage of Lot 16 was used without permission and for what period of time. In the accompanying Memorandum of Law, my lawyers explain why these facts are relevant to the relief that Plaintiffs are seeking. My purpose here is simply to convey the facts.

2. By filing this motion, Plaintiffs are not seeking a “do over” of the prior trial that dealt with the rental value of Lot 16 and the associated real property taxes.¹ Instead, Plaintiffs are requesting a new trial on issues that have never actually been ruled upon by this or any Court, and as to which we never had a full and fair opportunity to present evidence. I respectfully submit that it would be completely unjust for any of the Plaintiffs to pay for the entire rental value or tax burden associated with Lot 16 (“Lot 16” or “Defendant’s Property”) when the relevant facts are considered – essentially, (a) that Lot 16 was unimproved land that Arnold never sought to use until 2015, (b) Plaintiffs took no steps to prevent Arnold’s use and enjoyment of Defendant’s Property, and (c) Plaintiffs themselves did not make use of it, except for one Plaintiff, Flushing Airport Holdings, LLC (“Flushing Airport”), and in an extremely limited manner that is addressed herein. In fact, in this litigation that arose out of an adverse possession claim, Flushing Airport is the only owner of the lot that is adjacent to Lot 16.

3. In terms of why important facts were never brought to the Court’s attention, I can only confirm without waiving the attorney-client privilege that I was not advised by predecessor counsel

¹ As the Court will recall, Defendant/Counterclaim-Plaintiff Frank Arnold (“Defendant” or “Arnold”) retained an expert witness, Daniel Sciannameo, who is a commercial real estate appraiser. Instead of retaining a rebuttal expert, even as a precaution, my former lawyers filed a motion to preclude Mr. Sciannameo’s testimony and then did not prepare for the August 2018 trial of this matter, apparently believing that their motion would be granted and the trial would be adjourned. (See Transcript of August 15, 2018 Proceedings at pp. 3-4 and *passim*). However, the motion was denied and the Court moved the trial one day, from August 15 to 16, 2018, because Plaintiffs’ prior attorneys were not ready to proceed. The trial then went ahead on August 16, 2018, with Defendant’s expert providing un rebutted testimony that was largely adopted by the Court. (See Transcripts of August 16 and 23, 2018 Trial, and the Court’s Memorandum of February 20, 2019 (NYSCEF Doc. No. 420)). While I sincerely believe that the manner in which the trial went forward resulted in the Court’s issuing a finding of rent and tax liability that is excessive, I do understand that this is not the forum to address the matter.

that I had a right to appear at the trial in this case.² In fact, I did not even learn that my prior attorneys had waived Defendant's cross-examination until after-the-fact, when I saw it in the trial transcript. Because I never had a full and fair opportunity to actually explain to the Court what happened in this case, I ask for a chance to do so now.

4. Pending the hearing of this motion, I also urge the Court to refrain from entering a judgment against me personally or the other Plaintiffs. Seizing my personal bank accounts or those of my businesses will have devastating consequences. I spent years building Flushing Airport and Disano Trucking, Inc. ("Disano Trucking") into viable businesses and they will be ruined if they cannot pay their bills. Personally, I am a single parent and both my children live with me and are entirely dependant upon me for their necessities, as well as college tuition. If my accounts are seized, I will not be able to pay for my children's basic living expenses let alone their educations. Moreover, those consequences are entirely unnecessary to protect Defendant's interests, because Flushing Airport is willing to provide security sufficient to satisfy any judgment that Defendant may obtain.

5. In particular, and as indicated, Flushing Airport has title to real property directly adjacent to Lot 16 (referred to herein as "Lot 1"), which was plainly more valuable than Defendant's Property during all relevant time periods, because it was developed and utilized while Lot 16 was not. (A true and accurate copy of the Deed for Lot 1 that is available online is annexed hereto as Exhibit A). Pending the hearing of this motion, Flushing Airport hereby consents to the Court's enjoining the transfer or encumbrance of Lot 1, which will ensure that it remains available as

² As reflected in the NYSCEF Docket, after my prior attorneys filed a motion to withdraw, Plaintiffs retained Judd Burstein, P.C. to represent us in this matter.

security. As the managing member of Flushing Airport, and indeed its only member, I am authorized to make this commitment.

6. Furthermore, as discussed herein, Flushing Airport is the only Plaintiff that ever made use of any portion of Lot 16, albeit a small piece and only for a limited period of time. Under the circumstances, if any Plaintiff should be held liable for some portion of rent or taxes associated with Lot 16, it is Flushing Airport. As such, it is appropriate that it be Flushing Airport's assets that provide security.

RELEVANT FACTS REGARDING OCCUPANCY OF LOT 16

7. I apologize that the relevant facts were not previously conveyed to the Court as clearly as they should have been. Contrary to what the Court may have been led to understand, none of the Plaintiffs were physically present on Lot 16, certainly not the entire Defendant's Property, and not for the whole period of December 1, 2008 to November 30, 2016, which is the relevant time frame as set forth in the Court's February 20, 2019 Memorandum. (See NYSCEF Doc. No. 420 at p. 2). To explain, there are three adjacent lots at issue here: (a) Lot 16, which is Defendant's Property (Exhibit B hereto is a true and accurate copy of the Deed for Lot 16 that is available online), (b) Lot 1, which is owned by Flushing Airport (see the Deed at Exhibit A hereto), and (c) Lot 20, which is owned by the New York City Economic Development Corp. ("NYCEDC"). (Exhibit C hereto is a true and accurate copy of the Deed for Lot 20 that is available online).

8. I have annexed hereto as Exhibit D a true and correct copy of a tax map that depicts the three adjacent properties. In viewing Exhibit D, the Court should note that the land to the right of Lot 16 (which is to the East) is the old Flushing airfield, which was decommissioned in 1984 and has largely reverted to wetlands. This is important, because it means that for almost all times

relevant hereto, Arnold could not access Lot 16 from the East because it abutted an abandoned and overgrown airfield – in fact, as discussed below, there was no direct access to Lot 16 from anywhere between at least 2002 through in or around 2015.

9. In all events, Flushing Airport purchased Lot 1 back on June 24, 2005 from Ralph Romano (“Romano”), who is Arnold’s former son-in-law. (*See Exhibit A*). Since then, Flushing Airport has used Lot 1 principally as a parking lot for trucks for which it has received rental payments, including payments from Plaintiff/Counterclaim-Defendant Disano Trucking. Essentially, Disano Trucking’s only relationship to Lot 16 was that certain of its trucks and equipment have been stored on the adjacent Lot 1, and for a very brief time period, on Lot 16 (*see discussion infra*).

10. At the time when Flushing Airport purchased Lot 1 in 2005, Lot 16 was overgrown land with trees and scrub brush and it remained that way until in or around 2015. Under the circumstances, Lot 16 was unusable by Flushing Airport for its parking business, and none of the Plaintiffs physically occupied or made use of the land, except as specifically stated herein.

11. During this time period of 2005 through 2015, when Lot 16 was overgrown and generally unusable, Flushing Airport did make occasional use of a small portion of Defendant’s Property. To explain, when trucks that were parked on Lot 1 had to turn around to leave, their wide turning radius meant that some trucks would at times encroach slightly on Lot 16, but only for the brief time when they were in the act of turning around to exit Lot 1. These short and intermittent incursions did not deprive Arnold of the use and enjoyment of Lot 16, especially because, as discussed below, he never attempted to access Defendant’s Property until 2015. Additionally, because Lot 1 was open to the street to allow trucks to park, it is possible that some of Flushing

Airport's customers erroneously parked their trucks on a portion of Lot 16. I have no personal knowledge that this occurred, but I do want to be forthcoming with the Court that it was a possibility.

12. Fundamentally, from at least 2005 through early 2015, Lot 16 had no street access. To the contrary, from the time Flushing Airport purchased Lot 1 in June 2005 until 2015, the only way to access Lot 16 was through Lot 1, *i.e.*, Flushing Airport's property. This was so because in addition to abutting a decommissioned airport to the East, Lot 16 was landlocked between Lot 1 to the West, Lot 20 to the North, and to the South there was no road access.

13. I verified the First Amended Complaint in this case which alleges that Plaintiffs occupied Lot 16. (NYSCEF Doc. No. 85). When I stated that Plaintiffs occupied Lot 16, what I meant was that Defendant's Property was cutoff from the street and effectively the outside world except through Lot 1 which does have street access. I did not intend to convey that Plaintiffs were making active use of Defendant's Property, and I submit under oath that as a general matter we did not. What I did mean to allege, which is entirely truthful and accurate, is that Flushing Airport controlled any and all access to Lot 16.³

14. If Arnold had approached me and asked for some form of easement to access Lot 16, we could have addressed the matter, but that never happened. To the contrary, from the time when I first had any affiliation with Lot 1 in the 1990s, all the way through to 2015, I almost never heard from Arnold.

³ To the extent that this state of affairs was not clearly conveyed in the Amended Complaint, I apologize. I have a seventh grade education and have never been in a commercial litigation before this case (my only prior experience with litigation was when I divorced and as a minor I was a plaintiff in a personal injury lawsuit). I trusted my prior attorneys in this matter to prepare papers correctly. This is not meant as an excuse, but I do want to make clear that Plaintiffs have never intentionally misled the Court. Prior to my signing this affidavit, it was read to me in its entirety and I am comfortable that it is completely accurate.

15. I met Arnold briefly back in or around 2001, when I was present on Lot 1 based on a verbal arrangement I had with Romano. At the time, Arnold approached me and said that he owned a lot in the vicinity -- he literally "described" it by gesturing beyond Lot 1 to the North somewhere, which is actually Lot 20 that is owned by the NYCEDC, not Arnold. (See Exhibit D hereto). In other words, Arnold did not know what property was his. In all events, I responded by advising Arnold that I intended to purchase Romano's lot in the near future, and was interested in purchasing Defendant's Property as well. However, Arnold was non-committal, and after he left I did not see him for several years, despite my repeated attempts to contact him.

16. It was not until in or around 2007, that I was able to communicate with Arnold through his lawyers, Nixon Peabody, and I had communications with that law firm about the potential purchase of what I understood to be Defendant's Property. The email communications between Nixon Peabody and me confirm that there was significant confusion on both sides about the boundaries between the Lots owned by NYCEDC, Arnold, and Flushing Airport. (See Exhibit E hereto, a true and accurate copy of an email exchange with Adam Gilbert, Esq., of Nixon Peabody, and me, in which Mr. Gilbert wrote me that "I am having some trouble calculating the size of the Arnold plot. * * * It looks to me that the site is approximately 50,000 feet -- without regard to the wetlands issue. Do you agree?") As this email also indicates, development of Lot 16 was restricted because a significant portion of it was designated as wetlands. None of the Plaintiffs ever used any of the designated wetlands. Nevertheless, we reached several agreements in principle only to have Arnold repeatedly back out at the last moment. Ultimately, a deal was not consummated, and Arnold once again disappeared for several years.

17. It was not until in or around late 2014 that Arnold reappeared on Lot 1, *i.e.*, Flushing Airport's property, and told me that he owned it and that I had to "get off his property." In other words, Arnold mistakenly thought that he owned Lot 1 (and apparently Lot 16 as well). That Arnold did not know which Lot he actually owned is indicative of the fact that he was not using Lot 16 in any fashion for more than a decade prior to 2014, *i.e.*, when I met Arnold in or around 2001 he thought he owned land in the vicinity of Lot 20, which is NYCEDC's property, not his.

18. The reason for Arnold's sudden interest in Lot 16 is readily apparent. In late 2014, the NYCEDC commenced building a wall along the Southern border of Lot 16 in anticipation of extending 23rd Avenue across Lot 16's Southern border. NYCEDC also began moving forward with plans to construct a road (Linden Place) along the Eastern border of Lot 16. (Linden Place appears on the right side of Lot 16 as depicted in Exhibit D hereto, meaning that Linden Place was to be constructed between Lot 16 and the old Flushing Airport). To summarize, shortly after it became known that Lot 16 was going to become accessible for the first time absent an easement, Arnold materialized and sought to assert control over Defendant's Property – although he still did not know what property he actually owned.

19. After Arnold resurfaced in 2014, I once again sought to negotiate with him to purchase Lot 16. However, those discussions went nowhere and I consulted counsel. Without revealing the content of my discussions with counsel, the result was the filing of this lawsuit. As indicated by the relief Plaintiffs sought in this case, after consulting with my prior attorneys, I came to believe that Plaintiffs herein legally owned Lot 16 through "adverse possession." I now understand that the Court has found that this is not correct. I have also read that Defendant argued that Plaintiffs do not make out a case for adverse possession because we knew that we did not own

Lot 16 as shown by my negotiations with Nixon Peabody to purchase it, and further contended that I was effectively dishonest with the Court in seeking title through adverse possession. However, back in 2008-09, I had never heard about “adverse possession” and did not understand what application it might have had to the facts of this case. In sum, I never tried to conceal anything from the Court and trusted my attorneys to know the law as applied to the relevant facts.

20. In addition to the limited encroachment upon Lot 16 discussed above (*i.e.*, when some trucks entered while turning around to exit Lot 1), Flushing Airport used a portion of Lot 16, but only for a limited time period. This usage mainly occurred in 2015 to 2016, during the time when I thought in good faith that Plaintiffs owned Lot 16. In particular, Flushing Airport allowed certain trucks to park on a portion of Lot 16 for which it received rental payments in the following amounts from the entities listed below, and over the specified time periods:

- a. \$6,500 a month from XTL between approximately August 2015 and October 2016, for a total of \$97,500 (Exhibit F hereto contains true and accurate copies of representative checks);
- b. On average, \$3,500 a month from HSP between approximately May 2015 and August 2016, for a total of \$56,000 (Exhibit G hereto contains true and accurate copies of representative checks);⁴
- c. \$3,500 a month from C. Blackburn, Inc. between approximately January 2015 and October 2016, for a total of \$77,000 (Exhibit H hereto contains true and accurate copies of representative checks); and
- d. \$2,000 a month from Elio’s Truck Repair Corp. (“Elio’s”) from April 2014⁵ through August 2015, for a total of \$34,000 (The first and last checks are annexed hereto as Exhibit I).

⁴ As reflected in the payments from HSP in Exhibit G hereto, its usage varied and so the payments fluctuated.

⁵ Elio’s was on Lot 16 prior to the other tenants as he set up a shed on what I now know to be a portion of Lot 16 from the very beginning of his tenancy. However, as noted above, I did not know the boundaries of the adjacent properties at the time, and had believed in good faith that Elio’s was on Flushing Airport’s property. Nonetheless, I recognize that the rent Elio’s paid to Flushing Airport was for Elio’s’ use of Lot 16, not Lot 1.

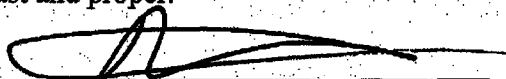
21. Based on the foregoing, Flushing Airport received approximately \$264,500 in rent for its use of a small portion of Lot 16. Accordingly, the actual rents received by Flushing Airport in connection with usage of Lot 16 is dwarfed by the nearly \$3.7 million in rental income as determined by the Court based upon the unrebutted testimony of Defendant's expert. (Plaintiffs would have filed this motion sooner, but it took weeks to obtain some of these financial records).

22. On June 23, 2015, I took a video of Lots 1, 16, and 20 that provides useful visual evidence of the three Lots as constituted at that time. (A true and accurate copy of the video is submitted herewith as Exhibit J). I personally created the video that is Exhibit J, and it is a true and accurate depiction of Lots 1, 16, and 20 on June 23, 2015. In viewing Exhibit J, the Court will see that the property to the right in the video (the East) is largely overgrown; this is Lot 16, and even as late as June 23, 2015, it is clear that Arnold had made no improvements to Lot 16 and was not taking steps to occupy it. In comparison, the property to the left (West) has been cleared and numerous trucks are parked on it. This is Lot 1, owned by Flushing Airport. However, the Court will note that a portion of Lot 16 that abuts Lot 1, and appears straight ahead in the video, had been cleared and that trucks are parked on it. This was the only portion of Lot 16 that any Plaintiff, specifically, Flushing Airport, ever continuously occupied, albeit for a short time period. The property to the North of both Lots 1 and 16 as shown in the video is Lot 20, owned by NYCEDC.

23. To provide additional context, I have attached hereto as Exhibit K a true and accurate copy of a satellite photo of the area available on GoogleEarth. As the Court can see, since I took the videotape of Lots 1, 16, and 20 on June 23, 2015, Lot 16 has been completely cleared of the shrubs and trees that appeared in the video. However, those improvements had not been made during the vast majority of the time period for which Defendant is seeking rental income.

CONCLUSION

WHEREFORE, for the foregoing reasons, as well as those set forth in the accompanying submissions, your affiant respectfully requests that this Court grant a new trial together with such other and further belief as this Court deems just and proper.



MAURIZIO OPPEDISANO

Sworn to before me this
23 day of May 2019



Notary Public

**Evan Solomon
Notary Public, State of New York
No. 01SO6332038
Qualified in Kings County
Commission Expires October 26, 2019**